BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Sean Ataee, M.D.	)	**Case No. 800-2017-029319**
Physician's and Surgeon's Certificate No. A 106704	)	
Respondent	)	

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 5, 2019.

IT IS SO ORDERED August 6, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____
Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

SEAN ATAEE, M.D., Respondent

Physician's and Surgeon's Certificate No. A 106704

Case No. 800-2017-029319

OAH No. 2019010060

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 17-19, 2019, in Los Angeles, California.

Rebecca L. Smith, Deputy Attorney General, appeared and represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

Steven M. Maslauski, Attorney at Law, appeared and represented respondent Sean Ataee, M.D. who was present throughout the hearing except during the testimony of Patient 1.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 19, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant brought the Accusation in her official capacity. The Board seeks to discipline respondent's medical license based on six causes for discipline, including gross negligence and repeated acts of negligence involving various acts of sexual misconduct with a patient identified herein as Patient 1 to protect her privacy.

2. Respondent timely submitted a Notice of Defense.

3. Respondent studied medicine in Iran for eight years, graduating in 1990. Respondent was licensed and practiced general and emergency medicine in Iran from 1991 through 1996. In 1996, respondent passed all examinations necessary to practice in the United States. He completed an internship program at Harlem Hospital and a three-year residency at Mount Sinai Hospital in the state of New York. Respondent is licensed in New York and Washington, although neither license is currently active.

4. On February 11, 2009, the Board issued respondent Physician's and Surgeon's Certificate Number A 106704. Respondent's license is active and valid until April 30, 2020.

Patient 1

5. In October 2016, Patient 1 was a registered nurse searching for a clinic near her place of employment to purchase a package of Vitamin B-12 injections for

her personal health. She observed that Health AtLast Fountain Valley (Clinic) offered the services she sought, was a few blocks from her work, and had good reviews on Yelp.

6. Respondent is a 51% owner of the Clinic and its medical director. Karen Tafreshi, a licensed chiropractor, owns a 49% interest in the Clinic. Respondent testified that his ownership interest was "on paper" only, that Ms. Tafreshi was the true owner of the Clinic, and that he was paid an hourly rate for medical services rendered to patients of the Clinic.

7. On October 21, 2016, Patient 1 went to the Clinic and completed an intake sheet indicating chief complaints of neck and shoulder tension and pain, fatigue, and "tingling or numbness in arms or hands." (Exhibit 8.) Respondent administered injections to Patient 1 and offered to Patient 1 other related services that might be covered by insurance. Respondent had no professional, personal, or business relations with Patient 1 prior to treating her on October 21, 2016.

8. On November 11, 2016, Patient 1 returned to the Clinic after work for follow-up treatment and was ushered into an examination room, wearing her nursing scrubs and tennis shoes. Patient 1 was given a cotton gown to put on and, while alone in the examination room, she removed her top and brassiere and put on the gown with the opening in the back and tied at the top.

9. Respondent entered the room without a chaperone and closed the door behind him. Respondent explained to Patient 1 that he would perform nerve testing to determine if she had carpel tunnel syndrome. Patient 1 sat on the only massage table in the examination room while respondent affixed sensors on various parts of her arms. The sensors were connected to a computer located at the head of the massage

table. At the conclusion of the test, respondent informed Patient 1 that she showed no positive results for carpel tunnel syndrome.

10. There was a conflict in the evidence as to respondent's conduct during an ensuing series of tests and treatments performed on Patient 1 during the office visit on November 11, 2016.

COMPLAINANT'S EVIDENCE OF SEXUAL MISCONDUCT

11. To administer trigger point injections and ultrasound therapy, respondent instructed Patient 1 to lay prone on the massage table. Patient 1 testified that, while respondent bent over her to perform the treatment on her back and neck, she could feel respondent's groin press against her arm above the elbow, that she thought it may have been accidental or inadvertent, but that she "tried to make herself smaller" by pulling her arms closer to her body.

12. Patient 1 testified that respondent then began to rub her back "for what felt like a long time," and that he then instructed her to roll over.

13. Patient 1 testified that, while she lay on her back, respondent raised her right arm with one hand, that he touched her shoulder and arm pit with the other hand, that his hand then moved from her arm pit to her breast while lowering her gown to expose the right breast, and that respondent proceeded to fondle and squeeze her right breast in his hand. Patient 1 testified that she told respondent, "I am fine there," that respondent continued to fondle her breast in spite of repeating the same statement a few more times, and that she began to get scared. Patient 1 testified that respondent then repeated the same examination with her left arm, again concluding with the exposure and fondling of her left breast. Patient 1 testified that

she stated, "I am fine there" at least four times before respondent stopped fondling her left breast.

14. Patient 1 testified that, to check her prior description of hip problems, respondent instructed Patient 1 to stand up from the massage table and walk in circles while respondent checked the rotation of her hips. Patient 1 testified that respondent walked behind her with his hands placed on her hips outside of her clothes, that his right hand gradually went down the front her scrub bottoms and into her underwear until she felt his fingers on her skin near but not in her vagina, that she could feel him press his hardened groin against her butt, and that she froze and did not comply when he instructed her to bend over. Patient 1 testified that respondent then backed away and left abruptly, that she put on her clothes and began to leave the Clinic, and that she "threw out a date" when the receptionist asked Patient 1 if she wanted to book another appointment.

15. Patient 1 and the receptionist at the Clinic both testified that Patient 1 called within minutes after leaving the Clinic to cancel the appointment, and to complain about respondent's conduct. The receptionist testified that Patient 1 described to her that respondent "put his hands in places that made her uncomfortable," but did not give any details. The receptionist testified that she assured Patient 1 that she would notify the owner, that she sent a text message to Ms. Tafreshi, that she subsequently spoke to Ms. Tafreshi about her contact with Patient 1, that Ms. Tafreshi described Patient 1 as "weird" and "kind of out of it," and that Ms. Tafreshi "often blamed patients when they complained about being uncomfortable" around respondent. The receptionist further testified that she had received at least two other complaints from patients expressing discomfort with respondent's conduct and that

Ms. Tafreshi "absolutely made excuses" for respondent when those complaints were reported.

16. Patient 1 testified that she spoke with Ms. Tafreshi while she was still in her car after returning home from the Clinic, that she told Ms. Tafreshi that respondent fondled her breasts, and that she felt respondent press his groin against her. She further testified that she was not crying at first but started crying during the conversation, and that she never demanded that Ms. Tafreshi discharge respondent.

17. Sergio Rodriguez, a corporal supervisor with the Fountain Valley Police Department, testified that he took an incident report on November 15, 2016, when Patient 1 appeared at the police station to report the incident as a potential sexual assault. Officer Rodriguez made a contemporaneous police report of Patient 1's description of respondent's conduct consistent with her testimony described at Factual Findings 11 through 14. (Exhibit 5, page 3.) Officer Rodriguez referred the matter to Gloria Scott, a detective in the police department's sexual assault unit.

18. Detective Scott testified that she spoke with Ms. Tafreshi about the reported assault, and that Ms. Tafreshi described Patient 1 as "flaky and contradictory," despite her inability to identify any contradiction in her statement. Detective Scott made a contemporaneous report of her investigation, including a detailed report of her conversation with Ms. Tafreshi. Detective Scott submitted the matter to the District Attorney's office, but testified that the District Attorney does not generally prosecute sex crimes without corroborating evidence. Detective Scott filed the online complaint summary with the Board that gave rise to this disciplinary action.

RESPONDENT'S EXCULPATORY EVIDENCE

19. Respondent denied that he pressed his groin against Patient 1 while administering injections in her back. He testified that, because the examination took place in November when the temperature would generally be lower, he was likely wearing a lab coat and he demonstrated that the lab coat covered the front of his body down to his knees. However, the lab coat was made of a thin cotton-polyester blend and did not negate Patient 1's credible testimony that she felt respondent's groin press against her arm. Respondent further implied in his testimony, by reference to photographs of the massage table, that it was physically impossible for his groin to make contact with the arm of Patient 1 if she were lying in the middle of the table. Ms. Tafreshi testified that she measured that table and that it was 30 inches wide and 33 inches high. Respondent reasoned that the arm of Patient 1 would be approximately 5 inches from the edge of the table during the treatment. Assuming those measurements are correct and taking into account the height and weight of both respondent and Patient 1 as they appeared at hearing, in-court demonstrations established that it was possible for respondent's groin to make contact with the arm of Patient 1 under the circumstances of the examination and treatment. Accordingly, respondent's evidence was insufficient to rebut the credible testimony of Patient 1 that she felt respondent press his groin against her arm during the injections.

20. Respondent testified that he did not instruct Patient 1 to lie face up and that he never exposed or fondled her breasts. He further testified that it was his custom and practice to use gloves and gels to release muscles after injection, and that the Clinic's custom and practice was not to instruct female patients to remove their bra when given a gown to put on.

21. Respondent denied putting his hands down the front of the scrub bottoms and underwear of Patient 1 or pressing his groin against her during the hip examination. Respondent testified that he stood to the side of Patient 1 and acknowledged putting his hands on her hips after noting "noise with walking." However, he denied following her around the examination room with his hands on her hips and reiterated, "None of the allegations happened."

22. Ms. Tafreshi testified that, when she spoke with Patient 1 on the evening of the incident, she was at a restaurant with her husband. Ms. Tafreshi testified that Patient 1 informed her of some but not all of the specific allegations in the Accusation, and that the omission of specifics during her conversation was an "inconsistency" that discredited Patient 1's credibility. Ms. Tafreshi testified that she took contemporaneous notes of her conversation with Patient 1, but that she had not looked at those notes since then, and never produced a copy of her notes to the Board or at the hearing to corroborate her testimony. Despite the report and testimony of Detective Scott to the contrary, Ms. Tafreshi testified that she never spoke to Detective Scott. Despite the testimony of the receptionist, Ms. Tafreshi testified that she never spoke to the receptionist about her conversation with Patient 1. Despite her own notes written after being interviewed by the Board in which she writes that Patient 1 described feeling respondent's groin against her arm, Ms. Tafreshi testified that Patient 1 described feeling respondent's groin against her hand. Despite the testimony of Patient 1 that she never demanded that respondent be discharged from his employment, Ms. Tafreshi testified that Patient 1 insisted that respondent be fired.

RESOLUTION OF EVIDENTIARY CONFLICT

23. In determining the credibility of each witness, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove

the truthfulness of the witness's testimony at the hearing. (Evid. Code, § 780.) The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected available material." (*Id.*, at p. 67-68, quoting from *Nevarov v. Caldwell* (1958) 161 Cal. App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The testimony of "one credible witness may constitute substantial evidence." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.) The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact. (Evid. Code, § 411.)

24. In this case, Patient 1 was a credible witness and is entitled to full credit. She testified in great detail and consistent with her prior statements to law enforcement and respondent's supervisor. Any omission made during her initial telephone conversation with Ms. Tafreshi does not give rise to an inference that Patient 1 fabricated any part of her testimony. Patient 1 had no prior personal, professional, or business relationship with respondent, and there is no evidence to show that she pursued or procured any financial benefit from her actions. The lack of motive and interest in the outcome of her version of the events tends to prove the truthfulness of Patient 1's testimony.

25. On the other hand, respondent's evidence does little to negate the testimony of Patient 1. Respondent and Ms. Tafreshi both have substantial financial interests in the outcome of the case, and respondent is motivated to preserve his

license. These motives and interests tend to disprove the truthfulness of their testimony. Ms. Tafreshi's testimony was largely disbelieved as contrary to substantial and more persuasive evidence.

26. Clear and convincing evidence was presented to establish that respondent committed the following acts during his examination of Patient 1 without medical reason or purpose and without a chaperone present:

(A) While Patient 1 was lying prone on an examination table, respondent caused or allowed his groin to make contact with Patient 1.

(B) Respondent exposed and touched Patient 1's breasts, without informing her of the need or intent to touch her breasts and without her permission to do so.

(C) Respondent reached beneath Patient 1's underwear with his right hand and touched her bare skin near her vagina.

(D) Respondent requested Patient 1 to bend forward in a standing position while his pelvis was in contact with her gluteal area.

(E) Respondent caused or allowed his genitals to come into contact with Patient 1's gluteal area during his examination of Patient 1's hips.

Standard of Care

27. The standard of care for a given profession is a question of fact and in most circumstances must be proven through expert witnesses. *(Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997-998, 1001; *Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 215.) "Standard of care" means the use of that

reasonable degree of skill, care, and knowledge ordinarily possessed and exercised by members of the profession under similar circumstances, at or about the time of the incidents in question. (*Flowers, supra*, 8 Cal.4th at p. 997-998.)

28. As articulated in the case of *Flowers v. Torrance Memorial Hospital Medical Center, supra*, 8 Cal.4th at p. 997:

> The amount of care deemed reasonable in any particular case will vary, while at the same time the standard of conduct itself remains constant, i.e., due care commensurate with the risk posed by the conduct taking into consideration all relevant circumstances. (Citation.) "'There are no "degrees" of care as a matter of law; there are only different amounts of care, as a matter of fact....' [Citation.]"

29. Complainant presented the expert testimony of Jerome Stenehjem, M.D., board-certified by the American Board of Physical Medicine and Rehabilitation. (Exhibit 6.) He testified that a physical examination should be performed in a manner that does not cause undue discomfort to the patient, and that any breach of social boundaries is a breach of the standard of care. If the need arises for a male physician to expose and touch the breasts of a female patient, the standard of care requires the physician to explain the need and to perform any such examination in the presence of a chaperone.

30. In the expert's opinion, respondent committed an extreme departure from the standard of care by exposing and touching the breasts of Patient 1 without any explanation or need and without a chaperone present, and continuing to do so after Patient 1 indicated she did not want to be examined that way.

31. In the expert's opinion, respondent did not depart from the standard of care by placing his hands on the hips of Patient 1 as part of the physical examination of her hips, but that it should have been done in a supervised setting and done in a way that would cause the least discomfort. According to the expert, instructing a patient to bend forward would be appropriate if checking for flexibility, "but would not be part of a hip exam." The expert testified about respondent's examination of Patient 1, "There is no imaginable reason for his pelvis to make contact while his hands were on her hips," and that contact with his genitals would be an extreme departure from the standard of care.

32. Clear and convincing evidence establishes that respondent's conduct described at Factual Finding 26, subparagraphs (A) through (E), constituted sexual misconduct and an extreme departure from the standard of care.

Disciplinary Considerations

33. On October 10, 2001, after a bench trial, respondent was convicted of sexual abuse in the third degree in violation of New York Penal Law section 130.55, a misdemeanor. (*People v. Ataee* (Crim. Ct., Queens County, New York, 2001, No. 200QN028980).) Respondent testified about the facts and circumstances of the conviction as follows: In 2000, while treating a comatose 83-year-old patient, the patient's daughter complained in Spanish that she herself suffered from thyroid problems and breathing difficulty. Understanding the daughter to be asking for an examination, respondent placed his stethoscope on the daughter's chest to listen to her heart, and touched her neck with his hands to evaluate her thyroid. The daughter subsequently complained to the hospital that respondent had touched her breast and stomach, and that he had tried to put his hands in her pants. Respondent was discharged from his employment at the hospital.

34. On September 4, 2003, the State Board for Professional Medical Conduct for the State of New York issued a Censure and Reprimand against respondent based on the conviction for sexual abused in the third degree described in Factual Finding 33.

35. On September 27, 2005, after respondent's application for licensure in California was denied, the then-acting Executive Director of the Board filed a Statement of Issues against respondent based on the New York conviction for sexual abuse and the disciplinary action taken by the New York licensing agency. On February 22, 2006, the Board adopted the Proposed Decision of an administrative law judge and denied respondent's application for a physician's and surgeon's certificate. The Proposed Decision was based in part upon the administrative law judge's conclusion:

> Respondent has not made a sufficient showing of rehabilitation to support issuance of a license. The underlying act occurred in 2000, the conviction occurred in 2001, and it was affirmed in 2003. The major thrust of respondent's presentation at hearing was to challenge the underlying acts, and not to demonstrate rehabilitation. Admittedly, the nature of the underlying acts must be understood so as to properly weigh the evidence of rehabilitation for those acts. However, in this case, respondent's adamant denials, maintained through the appeal of the conviction and today, show a lack of appreciation of the effect of having been convicted.

(Exhibit 13.)

36. On July 6, 2006, respondent enrolled in a six-week intensive outpatient sex offender treatment program under the supervision of Robert L. Lark, PhD, MAC. Respondent testified that he did not believe he was a sex offender or required sex addiction therapy, but he sought the treatment on his belief the Board would require it before issuing his license. Respondent completed the program on August 9, 2006. By completing the program, respondent was "expected to develop a sensitive recognition of the antecedents and consequences of sexual acting-out so as not to present himself as a danger to self or others, learn to recognize personal high risk situations, and gain the skills to be successful in personal, social, and occupational domains." (Exhibit 24.)

37. On August 8, 2008, respondent began a three-day educational training course conducted by Inner Solutions for Success in San Diego. Respondent met the objectives of the program, which included demonstrating an ability to behaviorally respond within professional guidelines to difficult patient/physician situations. (Exhibit 25.) Respondent demonstrated to the program instructors that he "recognize[d] how critical patient/physician communication is in establishing and maintaining professional boundaries, as well as to the patient/physician relationship." (*Ibid.*)

38. On April 26, 2007, in support of a subsequent application for a physician's and surgeon's certificate, respondent wrote to the Board to describe his continuing efforts toward rehabilitation in which he stated the "promise to hire a female physician assistant to do the examinations for me, . . . [and the] promise to have a female chaperone when visiting a female patient." (Exhibit 22.) Respondent further represented to the Board that, if he should be offered a full and unrestricted medical license, he "will have a female companion when seeing a female patient, either [his] wife, [his] nurse, or [his] physician assistant." (*Ibid.*)

39. On March 13, 2008, the then-acting Executive Director of the Board filed a Statement of Issues, again denying respondent's subsequent application for licensure based on the New York conviction for sexual abuse and the disciplinary action taken by the New York licensing agency.

40. On November 20, 2008, the Board adopted the Proposed Decision of an administrative law judge and issued its decision granting respondent's application for a physician's and surgeon's certificate. The proposed decision was based in part on the following finding of the administrative law judge: "One example of changes respondent will make in the future is that he plans to keep a female chaperone in the room whenever he is treating a female patient." (Exhibit 11.) The decision to issue respondent an unrestricted physician's and surgeon's certificate became effective December 20, 2008.

41. Victor Robert Rafa (Rafa), a chiropractor and owner of Gateway Rehab and Wellness Center, Inc. (Gateway), testified that he employed respondent as a medical doctor at his medical clinic in Mission Viejo, California, and that respondent did not disclose that he had been convicted of sexual abuse in the State of New York or disciplined by the New York licensing authority. On July 2, 2013, a female patient at Gateway filed a First Amended Complaint for Damages against respondent, Gateway, and Rafa. The civil action was based on allegations that respondent engaged in sexual misconduct with the patient during a consultation examination and nerve study, specifically including the following allegations:

> [Respondent] began caressing plaintiff's legs and did not keep her body covered [during the examination]. Her gown was up around her rib cage and [respondent] kept staring at her naked private parts.

22. Then [respondent] informed plaintiff that he needed to look for her pulse and began feeling for her pulse with his bare hands on her upper thighs and pubic area. He then pulled her right leg open and placed a needle on her right inner thigh where her panty line would be, while he placed his left thumb on her urethra. [Respondent] kept his thumb there and moved his fingers around her pubic area. Plaintiff did not realize that [respondent] was not wearing any gloves until she saw him sniff his fingers. He then proceeded to do the same thing with her other leg.

23. Plaintiff was then asked to roll over onto her back, but she could not move, so [respondent] had to roll her over. Her complete backside was entirely exposed, even though the pain she complained of was only in her back. [Respondent] began to massage plaintiff's ankles, legs, and worked his way up to her bottom. As he got to her right buttock, he became more aggressive and spread her butt cheeks apart.

(Exhibit 19.)

42. The allegations against respondent in the civil action were never adjudicated by the court or admitted by respondent. On April 22, 2015, respondent, Gateway, and Rafa filed an application with the court for a judicial determination of good faith settlement by which Rafa agreed to pay the plaintiff the sum of $1 million in exchange for a signed settlement agreement and release and a dismissal with prejudice. On May 18, 2015, the Superior Court of California for the County of Orange

issued its Order for Good Faith Settlement Pursuant to Code of Civil Procedure Section 877.6, and the case was dismissed.

43. Mansour Tafreshi, a licensed chiropractor, testified on behalf of respondent. Mr. Tafreshi and respondent are co-owners of a medical corporation (Ironstone), separate and apart from the Clinic managed by Ms. Tafreshi. Mr. Tafreshi testified that respondent sees patients at Ironstone once or twice per week, that up to 75 percent of the patients at Ironstone are female, and that he has never had any complaints from any patient or employee about respondent. He testified that respondent is very pleasant, very knowledgeable, a very happy person, and never brings personal problems to work. He further testified that respondent never struck him as a pervert, that respondent never mentioned any sex or cuss words, and that he was a very clean person. Mr. Tafreshi acknowledged that he did not have "much knowledge about respondent's past," but expressed his disbelief of the allegations against respondent by testifying: "I just don't know what's going on with these allegations. . . . . When you are in a room with patients, they can say anything."

44. Ms. Tafreshi testified that she has known respondent for six years, that she personally does not believe the allegations of Patient 1, that respondent is "extremely professional," and that she would trust her daughter to be in an examination room alone with respondent.

45. Respondent presented six supportive letters written by medical doctors and other healthcare practitioners familiar with respondent's performance as a physician. Respondent is described throughout these letters as being an "excellent physician," "exhibiting professionalism," demonstrating "a high level of dedication and enthusiasm," having "a remarkable capacity for breaking large issues into manageable segments," and being "an enthusiastic and helpful individual who displays a strong

quality character." (Exhibit A.) Respondent testified that he did not tell any individual who wrote a supportive letter about the allegations against him, that none of the writers knew about this case or the prior disciplinary and legal actions against him unless the writer discovered the information independently on the internet, and that he informed each writer that the reference letters would be submitted to insurance companies.

46. Respondent testified that he has not disclosed the allegations or the pending accusation against his license to his wife because he loves her and does not want to cause her to become depressed. Respondent testified that his wife attempted suicide after the disciplinary action against his New York license.

47. Since his license was issued on February 11, 2009, respondent has taken continuing medical education courses mostly on topics involving ethics and decision-making, but none on topics relating to social skills or avoiding uncomfortable situations. Also, respondent has not continued to seek therapy or treatment for sexual addiction because he does not believe he is addicted to anything.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Complainant has the burden of proof in an administrative action seeking to suspend or revoke a professional license, and the standard is clear and convincing proof to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Negligence

3. The first, second, and third causes for discipline allege unprofessional conduct based on gross negligence and repeated acts of negligence.

4. The Board is required to take action against any licensee who is charged with unprofessional conduct. (Bus. & Prof. Code, § 2234.) Unprofessional conduct includes gross negligence and repeated acts of negligence. (Bus. & Prof. Code, § 2234, subds. (b) and (c).) Gross negligence includes "an extreme departure from the ordinary standard of conduct." (*Cooper v. Board of Medical Examiners* (1975) 49 Cal.App.3d 931, 941; *Van Meter v. Bent Const. Co.* (1956) 46 Cal.2d 588, 594.) Repeated acts of negligence include "an initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care." (Bus. & Prof. Code, § 2234, subd. (c).)

5. In this case, respondent made separate and distinct departures from the standard of care in his treatment of Patient 1 by pressing his groin against her multiple times, exposing and fondling her breasts, and inserting his finger into her underpants to touch her skin near her vagina, all without medical reason or purpose and without a chaperone present. When the type of harm itself raises so strong an inference of negligence, and the physician's duty to prevent the harm is so clear, expert testimony is not required to establish the prevailing standard of care. (*Burke v. Washington Hospital Center* (D.C. Cir. 1973) 475 F.2d 364, 365.) Nonetheless, competent expert

testimony clearly and convincingly established that the departures from the standard of care were individually and collectively extreme. (Factual Findings 8-32.)

6. Cause exists to discipline respondent's license under Business and Professions Code section 2234, subdivisions (b) and (c), because clear and convincing evidence established that he engaged in unprofessional conduct based on gross negligence or repeated acts of negligence.

Incompetence

7. The fourth cause for discipline alleges unprofessional conduct based on incompetence.

8. Unprofessional conduct includes incompetence. (Bus. & Prof. Code, § 2234, subd. (d).) Incompetence has been defined as a "general lack of present ability to perform a given duty as distinguished from inability to perform such duty as a result of mere neglect or omission." (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 837-838.) "[A] licensee may be competent or capable of performing a given duty but negligent in performing that duty." (*Id.* at p. 838.)

9. The evidence fails to establish that respondent generally lacked a present ability to perform the duties presented by Patient 1. Respondent received adequate medical training in Iran and the United States, and has successfully treated patients with symptoms similar to Patient 1's chief complaints. Based on his training and experience, respondent possessed the ability to perform the duties presented by Patient 1 without engaging in the conduct described at Factual Finding 26, subparagraphs (A) through (E).

10. Although respondent was negligent in performing his duties to Patient 1, cause does not exist to discipline his license under Business and Professions Code section 2234, subdivision (d), based on incompetence.

Sexual Misconduct

11. The fifth cause for discipline alleges unprofessional conduct based on sexual abuse or misconduct.

12. Business and Professions Code section 726, subdivision (a), provides:

> The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed [as a physician and surgeon].

13. Clear and convincing evidence was presented to establish that, during his treatment of Patient 1, respondent engaged in sexual misconduct under Business and Professions Code section 726 by pressing his groin against Patient 1 multiple times, exposing and fondling her breasts, and inserting his finger into her underpants to touch her skin near her vagina, all without medical reason or purpose and without a chaperone present.

14. Cause exists to discipline respondent's license under Business and Professions Code section 726, subdivision (a), because he engaged in unprofessional conduct by engaging in acts of sexual misconduct.

Unprofessional Conduct

15. The sixth cause for discipline alleges general unprofessional conduct based on the allegations of the first through fifth causes for discipline.

16. Unprofessional conduct includes, but "is not limited to," the statutory definitions at Business and Professions Code section 2234. Courts have held that unprofessional conduct includes conduct which is "unbecoming a member in good standing of [the medical] profession," and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

17. The conduct described at Factual Finding 26, subparagraphs (A) through (E), is unbecoming a member in good standing of the medical profession, and demonstrated an unfitness to practice medicine. The conduct also constitutes gross negligence, repeated acts of negligence, and sexual misconduct, all of which are included in the statutory definition of unprofessional conduct. (Legal Conclusions 4-6 and 11-14.)

18. Cause exists to discipline respondent's license under Business and Professions Code sections 726 and 2234 because he generally engaged in unprofessional conduct. (Factual Findings 8-32.)

Level of Discipline

19. In determining the level of discipline to be imposed, an administrative law judge is mandated, wherever possible, to take action that is calculated to aid in the rehabilitation of a licensee, or to order restrictions as are indicated by the evidence. (Bus. & Prof. Code, § 2229, subd. (b).) Disciplinary actions must be calculated to aid in the rehabilitation of a licensee, but only to the extent not inconsistent with public

protection. (Bus. & Prof. Code, § 2229, subd. (b).) Protection of the public is the highest priority for the Board and is paramount over other interests in conflict with that objective. (Bus. & Prof. Code, §§ 2001.1, and 2229, subd. (a).)

20. Arguably the most important consideration in predicting future conduct is evidence of a change in attitude from that which existed at the time of the conduct in question. (*Singh v. Davi* (2012) 211 Cal.App.4th 141.) Respondent exhibited no remorse or acknowledgement of wrongdoing with respect to his treatment of Patient 1. He has pursued sex therapy and treatment for the sole purpose to demonstrate rehabilitation, but not out of a genuine belief that he needs to be rehabilitated. On the contrary, respondent adamantly denied conduct that was clearly and convincingly established. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.)

21. The more serious the misconduct, the stronger the evidence must be to show rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080.) Respondent's evidence of rehabilitation and mitigation is weak and vastly outweighed by evidence in aggravation. Respondent has history of license discipline in the state of New York and a civil action filed against him based on similar allegations of sexual misconduct with female patients. Since none of the authors of supporting letters were informed of the allegations of respondent's sexual misconduct in the pending accusation or in respondent's past, the letters cannot reliably demonstrate any rehabilitation or reformation from the misconduct. The testimony of Karen Tafreshi and Mansour Tafreshi has no weight as evidence of rehabilitation since neither witness believes the allegations against respondent or the need for him to reform his conduct.

22. The task in disciplinary cases is preventative, protective and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487.) Imposing license discipline furthers a

particular social purpose: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) Respondent has presented insufficient evidence to indicate any change in attitude or practice to prevent a recurrence. Since respondent's license was issued based on his representations to the Board that he would use a chaperone, ordering respondent to use a chaperone under a restricted license would be futile and not calculated to aid in his rehabilitation. Probationary terms and conditions will have no preventative or remedial effect in light of respondent's continuing and steadfast denial of any need for social skills training or therapy and treatment for sexual misconduct or addiction. Therefore, public protection is best served by revocation of respondent's license.

ORDER

The Accusation against respondent Sean Ataee, M.D., is affirmed. Physician's and Surgeon's Certificate Number A 106704 issued to respondent is revoked.

DATE: July 19, 2019

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SEAN ATAEE, M.D. 18837 Brookhurst Street, Suite 210 Fountain Valley, California 92708 Physician's and Surgeon's Certificate No. A 106704, Respondent.	Case No. 800-2017-029319 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about February 11, 2009, the Medical Board issued Physician's and Surgeon's Certificate Number A 106704 to Sean Ataee, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the

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applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

8. Section 726 of the Code states:

"(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division.

"..."

FACTUAL SUMMARY

9. On October 21, 2016, Patient 1 presented to Health Atlast, a chiropractic, massage and acupuncture and medical office located Fountain Valley for a Vitamin B12 injection.[1] She was seen by Respondent, a physical medicine and rehabilitation physician. He gave the patient the Vitamin B12 injection without incident.

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[1] For privacy purposes, the patient in this Accusation is referred to as Patient 1.

10. Patient 1 returned to Health Atlast on November 11, 2016 with complaints of upper back and wrist pain. She was again seen by Respondent.

11. Patient 1 was taken into an examination room and provided a gown by Respondent, who left the room while the patient changed. Patient 1, a nurse at a nearby clinic, was wearing hospital scrubs. She removed her bra, shirt and shoes. She put the gown on with its opening and tie in back. She left her underwear and scrub pants on and sat down on the examination table. Respondent returned to the examination room and closed the door. He did not have a chaperone with him.

12. Respondent performed a nerve conduction study while Patient 1 was seated on the examination table. Following the study, Respondent told the patient that she did not have carpal tunnel syndrome.

13. Respondent then directed the patient to lie prone (face down on her stomach) on the examination table. He performed trigger point injections in her upper back region and massaged the injection sites. While Respondent massaged the injected areas, Patient 1 felt his groin pressing against her upper arm, causing her to reposition her arm away from his bodily contact.

14. Respondent then instructed Patient 1 to lie supine (face up on her back) on the examination table. Thereafter, Respondent raised the patient's right arm and moved it while asking if she had pain. He then reached under the gown, exposing her right breast and fondling it with his open hand. In response, the patient said that she was "fine there." Respondent then removed his hand from her right breast and lowered her arm. Respondent then repeated this same maneuver on the patient's left arm and breast. Again, the patient told him that she was "fine there." The patient stated at least four times that she was "fine there" before he removed his hand from her left breast.

15. Respondent then instructed the patient to stand and asked if she had trouble walking. Respondent stood behind the patient, placed his hands on her hips and asked her to take several steps. He then placed his bare hands under her gown and with his right hand reached into her pants and beneath her underwear touching her bare skin. Respondent then stepped forward and the patient felt what she believed to be his erect penis against her buttocks. Respondent then

asked the patient to bend forward several times and she refused to do. Respondent then removed his hands from the patient's pants, informed her that she could get dressed and left the room.

16. As the patient was leaving the facility, her next appointment at Health Atlast was made at the receptionist's desk. After leaving the facility, the patient called Health Atlast to cancel any further appointments and report that she was touched inappropriately by Respondent.

17. Commencing in 2000, Respondent repeatedly applied for a physician's and surgeon's certificate in California. On August 27, 2008, at the time of the hearing on Respondent's fourth denied application for a physician's and surgeon's certificate in California, he represented that he planned to keep a female chaperone in the room whenever he is treating a female patient.[2] He was granted his California license following that hearing.

STANDARD OF CARE

18. When conducting a physical examination, the standard of medical practice in California requires that the physician avoid unnecessary touching or body contact especially in a manner that could be interpreted by the patient as a breach of social boundaries. Physical contact between a physician and patient occurs as a matter of necessity when conducting a physical examination. The standard physical examination may include palpation of shoulder or back muscles, moving and palpating the limbs, percussing the posterior thorax or palpating the abdomen. A physician may have cause to place his or her hand upon a patient's shoulder or forearm as a sign of reassurance or comfort. Other forms of physical contact initiated by the physician including rubbing, squeezing or hugging or unnecessary touching may be interpreted as a sexual overture by the patient in some contexts. In a prone or supine position, the patient may feel and be more vulnerable.

19. Evaluation of the shoulders or shoulder girdle may involve palpating the muscles around the shoulder but never involves touching the breasts. The need for incidental touching of the breasts could occur when evaluating the pectoralis muscle or the anterior ribs that underlie the breast. When incidental touching of the breasts is necessary, the standard of medical practice in

[2] *In the Matter of the Statement of Issues Against Shahab Ataee* before the Medical Board of California, in Case Number 20-2008-18897.

California requires that the physician explain the need to touch the breasts to the patient, obtain permission to touch the breasts prior to proceeding and have a chaperone present. The patient's breasts should not be exposed nor should the patient be disrobed to an extent greater than needed to complete the exam.

20. When conducting an evaluation of hip pain, the physician's fingertips may be placed over the greater trochanter (outer hip bone) during ambulation in order to asses for clicking as the iliotibial band crosses the greater trochanter. Palpating inferior to the greater trochanter may reveal tenderness in the iliotibial band and tensor fascia lata muscle. Assessing the iliotibial band may include having the patient extend and adduct the hip while in a standing position while the physician palpates the greater trochanter. The physician may also apply manual pressure to the posterior gluteal area in order to actively assist extension of the hip joint to assess for hip-flexor contracture as a source of pain. Forward bending in a standing position may be useful in assessing flexibility but is not part of the hip examination. There is no need for the physician to touch the patient while the patient is forward bending in a standing position.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence – Improper Touching of Patient 1's Breasts)

21. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he engaged in gross negligence by improperly touching Patient 1's breasts during his November 11, 2016 examination of her. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 14 and 16 through 19, above, as though fully set forth herein. The circumstances are as follows:

22. Without medical reason or purpose and without a chaperone present, Respondent exposed and touched Patient 1's breasts. The patient was not informed of the need or intent to touch her breasts nor did she give permission to do so.

23. Respondent's acts and/or omissions as set forth in paragraphs 9 through 14 and 16 through 19, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence – Improper Touching and Physical Contact During Examination of Patient 1's Hips)

24. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he engaged in gross negligence by improperly touching and making physical contact with Patient 1 during his November 11, 2016 examination of her hips. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 11 and 15 through 18 and 20, as though fully set forth herein. The circumstances are as follows:

25. Without medical reason or purpose and without a chaperone present, Respondent reached beneath Patient 1's underwear with his right hand touching her bare skin.

26. Without medical reason or purpose and without a chaperone present, Respondent requested that Patient 1 forward-bend in a standing position while his pelvis was in contact with her gluteal area.

27. Without medical reason or purpose and without a chaperone present, Respondent caused or allowed his genitals to come into contact with Patient 1's gluteal area.

28. Respondent's acts and/or omissions as set forth in paragraphs 9 through 11 and 15 through 18 and 20, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Repeated Acts of Negligence)

29. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he engaged in repeated negligent acts in the care and treatment of Patient 1 during his November 11, 2016 examination of her. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 28, above, as though fully set forth herein. The circumstances are as follows:

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30. Without medical reason or purpose and without a chaperone present, Respondent exposed and touched Patient 1's breasts. The patient was not informed of the need or intent to touch her breasts nor did she give permission to do so.

31. Without medical reason or purpose and without a chaperone present, Respondent reached beneath Patient 1's underwear with his right hand touching her bare skin.

32. Without medical reason or purpose and without a chaperone present, Respondent requested that Patient 1 forward-bend in a standing position while his pelvis was in contact with her gluteal area.

33. Without medical reason or purpose and without a chaperone present, Respondent caused or allowed his genitals to come into contact with Patient 1's gluteal area.

34. Without a chaperone present, while Patient 1 was lying in a supine position on the examination table, Respondent caused or allowed his groin or pelvis make contact with her, requiring that the patient move to avoid this contact.

35. Respondent's acts and/or omissions as set forth in paragraphs 9 through 28, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (c), of the Code. Therefore cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

36. Respondent is subject to disciplinary action under section 2234, subdivision (d), of the Code in that he was incompetent in his evaluation and examination of Patient 1 on November 11, 2016. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 35, above, as though fully set forth herein. The circumstances are as follows:

37. Without medical reason or purpose and without a chaperone present, Respondent exposed and touched Patient 1's breasts. The patient was not informed of the need or intent to touch her breasts nor did she give permission to do so.

38. Requesting that Patient 1 forward bend in a standing position is not part of a hip examination and there was no need to Respondent to touch the patient while requesting that she forward bend in a standing position.

39. Respondent's acts and/or omissions as set forth in paragraphs 9 through 35, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (d), of the Code. Therefore cause for discipline exists.

FIFTH CAUSE FOR DISCIPLINE

(Sexual Misconduct)

40. Respondent is subject to disciplinary action under section 726 of the Code in that he engaged in sexual misconduct with Patient 1 during her examination on November 11, 2016. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 39, above, as though fully set forth herein. The circumstances are as follows:

41. Without medical reason or purpose and without a chaperone present, Respondent exposed and touched Patient 1's breasts.

42. Without medical reason or purpose and without a chaperone present, Respondent reached beneath Patient 1's underwear with his right hand touching her bare skin.

43. Without medical reason or purpose and without a chaperone present, Respondent requested that Patient 1 forward-bend in a standing position while his pelvis was in contact with her gluteal area.

44. Without medical reason or purpose and without a chaperone present, Respondent caused or allowed his genitals to come into contact with Patient 1's gluteal area.

45. Without a chaperone present, while Patient 1 was lying in a supine position on the examination table, Respondent caused or allowed his groin or pelvis make contact with her, requiring that the patient move to avoid this contact.

46. Respondent's acts and/or omissions as set forth in paragraphs 9 through 39, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 726 of the Code. Therefore cause for discipline exists.

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SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

47. Respondent is subject to disciplinary action under sections 726 and 2234 of the Code, for engaging in unprofessional conduct. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 46, above, as though fully set forth herein.

48. Respondent's acts and/or omissions as set forth in paragraphs 9 through 46, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to sections 726 and 2234 of the Code. Therefore cause for discipline exists.

DISCIPLINARY CONSIDERATIONS

49. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on October 10, 2001, in a criminal action entitled *The People of the State of New York v. Shahab Ataee,* before the Criminal Court of the City of New York, County of Queens, Docket Number 2000QN028980, Respondent was convicted of violating New York Penal Law section 130.55, sexual abuse in the third degree, a misdemeanor. Respondent was sentenced to one-year conditional discharge, was required to pay a surcharge of $120, and was ordered to have no contact with the victim. Said conviction was appealed by Respondent and upheld by the Supreme Court of the State of New York on or about March 15, 2003 (Supreme Court of the State of New York, Appellate Term, 2nd and 11th Judicial Districts, case no 2001-1492 Q CR.) The record of the criminal proceeding is incorporated as if fully set forth herein.

50. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on September 4, 2003, the State Board for Professional Medical Conduct, State of New York, Department of Health, issued a Determination and Order in which a censure and reprimand was issued against Respondent, pursuant to New York Education Law section 6530, subdivision (9)(a)(i), for having engaged in an act of professional misconduct. The record of the State Board for Professional Medical Conduct, State of New York is incorporated as if fully set forth herein.

51. In a civil lawsuit entitled *Jane Doe v. Gateway Rehab & Wellness Center, Inc., Victor Rafa, D.C. and Sean Ataee, M.D.*, Orange County Superior Court Case No. 30-2013-006335,

Plaintiff claimed that she presented to Gateway Rehab on April 11, 2012 for nerve conduction studies to be performed by Respondent. She alleged that during the nerve conduction studies, she was touched in an inappropriate and sexual manner by Respondent and that as a result of the alleged "sexual assault" by Respondent, she suffered emotional distress, anxiety, panic attacks, depression, and a sleep disorder. As to Defendant Victor Rafa, D.C., a partial owner of Gateway Rehab, the patient alleged that he failed to properly and thoroughly screen [Respondent] for his competency to treat patients," failed to properly supervise Respondent and failed to provide a chaperone when Respondent was treating female patients. Dr. Rafa settled the matter with the plaintiff in the amount of $1,000,000, the policy limits of his professional liability insurance coverage. The record of the civil proceeding is incorporated as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 106704, issued to Sean Ataee, M.D.;

2. Revoking, suspending or denying approval of Sean Ataee, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Sean Ataee, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED:
November 20, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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